*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.16828 of 2007

% 27-9-2007

Sri Venkateswara Boatsmen and Sand Workers
Labour Contract Cooperative Society,
Aurangabad village, Kovvur Mandal,
West Godavari District
Represented by its President Paka Srinivas
.. Petitioner

And

$ The Government of Andhra Pradesh,
Department of Mines & Geology,
Secretariat Buildings,
Hyderabad,
Represented by its Secretary
and others ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri C.V.R. Rudra Prasad

^ Counsel for respondents 1 to 3 : Asst.G.P. for Industries
Counsel for respondent No.4 : Asst. G.P. for Irrigation
Counsel for respondent No.5 : Sri K.Jyothi Prasad

?CASES REFERRED :

NIL

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16828 of 2007

Date : 27-9-2007

Between:

Sri Venkateswara Boatsmen and Sand Workers
Labour Contract Cooperative Society,
Aurangabad village, Kovvur Mandal,
West Godavari District
Represented by its President Paka Srinivas
.. Petitioner

And

The Government of Andhra Pradesh,
Department of Mines & Geology,
Secretariat Buildings,
Hyderabad,
Represented by its Secretary
and others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16828 of 2007

ORDER:

1. Heard Sri C.V.R.Rudra Prasad, the learned Counsel representing the petitioner and the learned Assistant Government Pleader for Industries representing respondents 1 to 3 and the learned Assistant Government Pleader for Irrigation representing the 4th respondent and Jyothi Prasad, the learned Counsel representing the 5th respondent.

2. The principal question which had been argued in elaboration by the Counsel on record is in relation to contravention of Rule 9N of A.P. Minor Mineral Concession Rules 1966, hereinafter in short referred to as "Rules" for the purpose of convenience.

3. The Writ Petition is filed for a Writ of Mandamus declaring the order of the 2nd respondent

dated 24-7-2007 made in Proceedings No.2153/Q/2007 permitting 5th respondent to change the ramp point from 28/5-7 KM to 27/4-6 KM in respect of Reach No.3 at Tadipudi village, Tallapudi Mandal, West Godavari District without giving opportunity to the petitioner to oppose the same as arbitrary, illegal, discriminatory, colourable exercise of power, violative of principles of natural justice, violative of Rule 9N of the Rules and the provisions of the River Conservancy Act and also violative of fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India and consequently to set aside the same and to pass such other suitable orders.

4. The petitioner, Sri Venkateswara Boatsmen and Sand Workers Labour Contract Co-operative Society, represented by its President had sworn to the affidavit pleading that the petitioner is a Society registered under the A.P. Co-operative Societies Act 1964. The 3rd respondent issued auction notice No.866/Q/2007 dated 23-4-2007 published in Eenadu Telugu Daily seeking to conduct sealed tender-cum-public auction for grant of leasehold rights to quarry sand from the area situated within the West Godavari District limits on Akhanda and Vashishta Godavari. The lease period is fixed as two years and the auction was scheduled to be held on 11-5-2007 at 10.30 A.M. in the meeting hall of the

Collectorate, Eluru. The said auction is governed by the Rules. It is further pleaded that Sl.No.3 of the Schedule to the Notification pertains to Tadipudi Reach from 27.000 KM to 29.200 KM and the ramp is at 28/5-7 and the sand has to be lifted through boats. The competent authority fixed the upset price in respect of the said Reach at Rs.4,29,785/-. Similarly, Sl.No.4 of the Schedule to the Notification pertains to the Prakkilanka Reach from 23.000 KM to 27.000KM and the ramp is at 25/4-6 and the sand has to be lifted through boats. The competent authority fixed the upset price in respect of the said Reach at Rs.7,16,308/-. The petitioner participated in the auction held on 11-5-2007 in respect of Prakkilanka Reach and became the highest bidder at Rs.12,20,000/- and the lease deed was executed on 24-5-2007. The lease period is subsisting till 31-3-2009. The petitioner had been conducting quarry operations strictly in accordance with the Rules and from the notified ramp at 25/400 KM to 25/600 KM. However, the leasehold rights in respect of Sl.No.3, Tadipudi were postponed by the authorities without assigning any reasons. It is also further pleaded that the 3rd respondent once again issued auction notification dated 11-5-2007 published in Vaartha Telugu Daily on 14-5-2007whereunder the Tadipudi Reach No.3 is placed at Sl.No.2. The aforementioned Reach Limits

and the notified ramp along with upset price are reiterated in the fresh notification also. The 5th respondent became the highest bidder in respect of Tadipudi Reach in the auction held on 29-5-2007 at Rs.4,35,000/- and the lease is subsisting in its favour upto 31-3-2009. While so, the 5th respondent started using the notified ramp at 28/5-7 as well as the unauthorized ramp at 27/4-6 in Tadipudi village resulting in huge financial loss to the petitioner-Society and its Members who are solely eking out their livelihood by way of lifting the sand through boats and hence the petitioner was constrained to make a detailed representation dated 5-6-2007 to the 3rd respondent requesting to stop the illegal activities being done by the 5th respondent marking a copy to the 4th respondent. Though the official respondents received the representation submitted by the petitioner, they did not responded to the request of the petitioner. Therefore once again on 3-7-2007, the petitioner submitted a complaint against the unauthorized and illegal usage of the ramp by the 5th respondent resulting in huge loss to the petitioner. Not only the members of the petitioner-Society but also the workers and boatsmen who are solely dependent upon the sand quarry operations being conducted by the Society would be adversely affected.

Therefore the villagers of Prakkilanka also submitted representation to the respondents 3 and 4 requesting to forthwith restrain the 5th respondent from encroaching into Prakkilanka Revenue village. It is also further pleaded that as the authorities are helping the 5th respondent from the beginning due to the political influence from the ruling party leaders, they did not consider the petitioner's complaints and the petitioner was constrained to issue telegrams to all the concerned authorities including the respondents 2 to 4 to take action immediately against the unauthroised ramp being used by the 5th respondent. It is also further pleaded that in the representation dated 3-7-2007, the petitioner also requested the authorities to refund the amount paid by it for Reach No.4 if they failed to restrain the 5th respondent from using the unauthorized ramp. While so, the 3rd respondent passed the impugned order dated 24-7-2007 in proceedings No.2153/Q/2007 permitting the 5th respondent to use the ramp point at 27/400-27/400 KM in stead of the notified ramp at 28/500-28/700 KM. A reading of the said order would clearly demonstrate the influence of the 5th respondent on the authorities. Rule 9N of G.O.Ms.No.84, Industries and Commerce (M.1) dated 10-4-2007 as amended stipulates that *The lessee should make use of*

authorized ramps and paths only for transportation of sand from the quarry and not open any new ramps or paths. However any new ramps can be permitted by the concerned Assistant Director of Mines & Geology only with the consent to concerned Mandal Revenue Officer in case of Government Land and River Conservator where the River Conservation Act applies and in case of patta lands with the consent of the pattadar duly verifying the claims supported by clarification issued by the Mandal Revenue Officer concerned. Therefore, in the present case, the 5th respondent-lessee must use the authorized ramp situated at 28/500 – 28/700 KM alone and he cannot use any other area as a ramp point, whereas the impugned order says that the 5th respondent in a preplanned manner submitted a representation on 26-5-2007 itself requesting to permit the change of ramp as if it is going to knock down the Reach in its favour. It is relevant to point out that the auction is held on 29-5-2007. Based on such a representation, without there being any change in the ramp and contrary to the Rules, the 5th respondent had been using the authorized as well as unauthorized ramps. It is stated in the impugned order that the said representation was forwarded to the 4th respondent for remarks and in turn the 4th respondent

offered his remarks stating that the notified area is not useful to quarry the sand. Further, the 3rd respondent inspected the area on 3-7-2007 and found that the notified ramp is below 100 Mtrs. from the river bank and it is very steep and the proposed ramp is situated more than 100 Mtrs. from the river bund and it is possible to form the approach bata by reducing steep to move the vehicles. It was further noticed that the original distance from the ramp points between Reach Nos.3 and 4 is 2.90 KM whereas the distance between the original ramp point of Reach No.4 and the proposed ramp in Reach No.3 is 1.80 KM. Therefore the 3rd respondent ought not to have passed the impugned order permitting the change of ramp. Having referred to the objections raised by the petitioner and the villagers, the official respondents ought to have given opportunity of hearing to the petitioner and on the contrary the impugned order is passed in order to benefit the 5th respondent without any reason that too merely for the sake of benefiting the 5th respondent and causing huge financial loss to the petitioner. Therefore the impugned order is liable to be set aside on the ground of violative of principles of natural justice. A particular reach has to be notified before the auctions considering all the relevant factors and it cannot be changed except

for scientific reasons or else the lessees like the petitioners who had paid huge amounts will suffer grave and irreparable loss due to reduction of distances. It is also further pleaded that the 3rd respondent also referred to the order dated 5-7-2007 of the Deputy Executive Engineer, Head Works and Supplies Division, Dowleswaram whereunder he directed the 5th respondent that they formed new ramp and disturbed the river bund without the prior permission of the Irrigation Department and it is in violation of the River Conservancy Act. Further, the 5th respondent was directed to form the river bund as usual otherwise necessary action will be taken against them. The 3rd respondent was also directed not to allow for change of ramp point until further intimation. Based on such an order, the 3rd respondent in order to endorse the illegality being perpetrated by the 5th respondent requested the 4th respondent to give clearance for change of ramp point. It is relevant to point out that the authorities did not initiate any steps for change of ramp point for any technical reasons or the reasons assigned by them but at the behest of the 5th respondent who wanted to conveniently do its business. The said action is arbitrary, illegal, colourable exercise of power, non-application of mind to the relevant issues and

violative of Rule 9N of the Rules. It is also further stated that as per the said Rule, the competent authority can permit any new ramps only with the prior consent of the pattadar duly verifying the claims supported by clarification issued by the concerned Mandal Revenue Officer. In this case, no such procedure is followed and on the contrary the 2nd respondent was requested to pass a resolution for change of ramp and the impugned order states that such a resolution was passed subject to the condition that the leaseholder should take all precautionary measures in flood season as per the conditions imposed by the 4th respondent. In fact, the 2nd respondent has no power or jurisdiction to pass such a resolution and as such the same is a nullity in the eye of law. The 3rd respondent also endorsed the damage caused by the 5th respondent to the river banks and it was further directed to restore the same. If the new ramp is allowed to be operated, taking advantage of the same, the 5th respondent is operating the notified ramp as well as the newly permitted ramp. It is relevant to point out here that the new ramp point is situated in a patta land owned by a private individual and the respondents 2 to 4 did not bother to verify and obtain certification from the competent authority as to the feasibility of the same and on the said

ground alone the impugned order is liable to be set aside. It is also further pleaded that as a result of opening of unauthorized ramp which was acknowledged by the authorities in the impugned order in favour of the 5th respondent, the petitioner is incurring huge financial loss. As already stated, reduction of more than 1 KM distance for the ramp point benefits the businessmen such as lorry and tractor transporters and the same will force the petitioner to sustain huge losses. If the petitioner is made to known at the time of auctions that the ramp in respect of Reach No.3 is going the changed, it would not have participated in the auction in respect of Reach No.4 and paid about Rs.12,20,000/-, whereas having paid about Rs.4,35,000/-, the 5th respondent is given benefit more than what is entitled by it and on the contrary the petitioner is indirectly deprived of its right to enjoy the leasehold rights and as such the said action must be declared as violative of the fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India. Taking advantage of the impugned order, the 5th respondent is openly claiming that it will continue to operate the notified ramp point as well as the new ramp point as the new one was permitted by the authorities as per the wishes of the ruling party politicians with whose backing it became successful bidder. Already the petitioner is incurring huge

losses and if the 5th respondent is permitted to use the new ramp, the petitioner will continue to suffer irreparable loss. The impugned order is also liable to be set aside as violative of the provisions of the River Conservancy Act. Further, the 2nd respondent is not an expert to decide whether a particular ramp can be notified or changed at a particular point and the expert who is the Deputy Executive Engineer, Head Works and supplies Sub-Division, Dowleswaram opined that the action of the 5th respondent in forming the new ramp is in violation of the River Conservancy Act and the said opinion must be respected. In view of the aforesaid facts, unless this Court sets aside the impugned order the petitioner as well as its workers and boatsmen who are solely eking out their livelihood depending on sand quary operations will suffer grave and irreparable loss. In such circumstances, it is stated that the writ petitioner had invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

5. In the counter affidavit filed by the 3rd respondent, several facts had been pleaded. It is averred that the auction notification was issued in respect of Reach Nos.3 and 4 of the AGRB i.e., from 27/000 to 29/200 KM Ramp Point at 28/500 to 28/700 KM at Tadipudi village, Tadipudi Mandal, West Godavari District

and Prakkilanka among other reaches by the 3rd respondent vide Notification No.866/Q/2007 dated 23-4-2007 and the date of auction was fixed on 11-5-2007 at Collectorate Meeting Hall, West Godavari District, Eluru. It is further averred that the minimum bid amount was fixed for Reach No.3 i.e., Tadipudi Reach, at Rs.4,29,785/- and for Reach No.4 i.e., Prakkilanka, the minimum was fixed at Rs.7,16,308/-. In respect of Reach No.4, the petitioner's Society was the highest bidder at Rs.12,20,000/-. The petitioner's Society had executed lease deed for Reach No.4 on 24-5-2007. In respect of Reach No.3 no application was received and hence a fresh notification was issued on 11-5-2007 for Public Auction-cum-Sealed Tender. It is also further averred that in respect of Reach No.3, re-notification was issued by the 3rd respondent vide notification No.866/Q/2007 dated 11-5-2007 by reducing the minimum bid amount as Rs.4,12,594/- and the date of auction was fixed on 29-5-2007. In respect of Reach No.3, M/s.Ayyappa Boatmen Co-operative Society was the highest bidder at Rs.4,35,000/-. The 10% Commission on highest bid amount was not allowed to the Society due to non-submission of genuinety certificate from the Divisional Co-operative Officer concerned. It is further stated that M/s.Ayyhappa Boatsmen Coop. Society had submitted a letter dated 26-5-2007 along with sealed

tender cover and the same was opened at the time of auction on 29-5-2007. In the said letter, the Society had requested to change the ramp point for Reach No.3 at any suitable place in the length of reach i.e., 27/000 to 29/000. As per Rule 9N of the Rules, the lessee should make use of authorized ramps and paths only for transportation of sand from the quarry and not open any ramps or paths. Any ramp can be permitted by the concerned Assistant Director of Mines and Geology with the consent of the concerned Mandal Revenue Officer in the case of Government land and River Conservator where the River Conservation Act applies and in case of patta lands with the consent of Pattadar duly verifying the claims supported by certification issued by the Mandal Revenue Officer concerned. In the present case, the area belongs to river bank and comes under River Conservation Act and hence the 3rd respondent vide letter No.2153/Q/2007 dated 21-6-2007 had forwarded the representation of the 5th respondent to the 4th respondent for his consent to change the ramp point for Reach No.3 in suitable place in the length of the Reach 27/000 to 29/000. It is also further stated that the 4th respondent by letter No.420M dated 25-6-2007 had given permission to change ramp point in between 27/400 to 27/600. On

receipt of the consent from the 4th respondent, the 3rd respondent had submitted proposals to Zonal Joint Director of Mines and Geology, Visakhapatnam who is the confirming Authority under Rule 9(H-1) of the Rules. The Zonal Joint Director of Mines and Geology, Visakhapatnam in Memo No.2075/Sand/2007 dated 6-7-2007 had directed the 3rd respondent: "*The purview under Rule 9(N) lies with the Asst. Director of Mines and Geology who can exercise the authority independently after obtaining necessary clearances prescribed therein preferably within the approval of the District Level Committee for Sand Auctions so as to enable the members of the Committee also aware of the deviations in the location of the ramp what has been approved for Notification. The formal amendment will be issued after the above compliance".* It is further stated that as per the directions of the Zonal Joint Director of Mines and Geology, Visakhapatnam, the 3rd respondent had brought the issue to the notice of the 2nd respondent and the members of the District Level Committee for sand for approval. After resolution was passed by the District Level Committee for sand auctions, the 3rd respondent had given amendment for changing ramp point to Reach No.3 to the 5th respondent. Hence the change of ramp

point at Reach No.3 of Tadipudi village is in accordance with Rule 9N of the Rules. The 3rd respondent had acted in accordance with the Rules and Regulations in changing the ramp point at Reach No.3 of Tadipudi. Therefore the contention of the petitioner is contrary to the same is baseless and incorrect. It is further stated that the respondent is acting strictly in accordance with Rules and Regulations governed under the Rules. The highest bidder for Reach No.3 is Ayyappa Boatsmen Co-operative Society. 10% concession given for boatsmen Co-operative Societies under Rule 9C of the Rules was not allowed to the Society because the Society had not produced genuinety certificate issued by Divisional Co-operative Officer concerned as per Rule 9 and hence the contention of the petitioner to help the 5th respondent on political influence is absolutely incorrect and baseless. The change of ramp point in respect of Reach No.3 of AGRB from 27/400 to 27/600 KM near Tadipudi village was subject to the condition that not to use old ramp point i.e., 28/500 to 28/700. The petitioner's ramp point i.e., Prakkilanka village from 25/400 to 25/600 KM upstream of AGRB comes to 2.00 KMs. before the 5th respondent and hence there is no any adverse effect to the petitioner's Society in changing of ramp point which was done by the

3rd respondent in accordance with Rule 9N of the Rules. It is further stated that the change of ramp point in Reach No.3 is strictly in accordance with Rule 9N of the Rules and the 3rd respondent had not deviated any rules and hence the contention of the petitioner is wrong and imaginary. As per Rule 9N of the Rules, the lessee should make use of authorized ramps and paths only for transportation of sand from the quarry and not to open any ramps or paths. As aforesaid, any ramp can be permitted by the concerned Assistant Director of Mines and Geology and hence the 3rd respondent by letter No.2153/Q/2007 dated 21-6-2007 had forwarded the representation of the 5th respondent to the 4th respondent for his consent to change the ramp point for Reach No.3 in suitable place in the length of the Reach i.e., 27/000 to 29/000. The 4th respondent by letter No.40M dated 25-6-2007 had given permission to change the ramp point in between 27/400 to 2/600. Further, the 4th respondent had given clearance again by letter No.AB/Ex.A.5/N.511, dated 11-7-2007 with a condition to restore the damaged bank to the standards already reported by letter No.420M dated 26-6-2007. On receipt of consent from the 4th respondent, the 3rd respondent had brought to the notice of the 2nd respondent and members of the District

Level Committee for sand for approval. After resolution was passed by the District Level Committee for sand auctions, the 3rd respondent had given amendment with Rules and Regulations in changing of ramp point at Reach No.3 of Tadipudi village and hence the contention of the petitioner is not correct since the ramp point is changed in accordance with Rule 9N of the Rules. Further, the 2nd respondent is the Chairman of the District Level Committee for sand auction, West Godavari District. The Executive Engineer, Godavari head Works Division, Dowleswaram is also one of the member in the said Committee and hence the 2nd respondent had taken technical suggestions from the members of the Committee before taking the decision on the issue. Further, it is averred that under Rule 35A of the Rules, the petitioner has to appeal before the Government on the orders passed by the 3rd respondent within 90 days from the date of issue of such orders and hence the Writ Petition is not maintainable without availing the alternative remedy.

6. The 5th respondent filed a counter affidavit in detail substantially taking the same stand as taken by the 3rd respondent. The specific stand taken in para-4 of the of the counter affidavit by the 5th respondent is that they never used the ramp at 27/4-6 unauthorisedly at any point

of time without there being any permission order from the authorities concerned and thus the question of any loss to the petitioner Society or its members does not arise. The further averment that the members of the petitioner Society are solely eking out their livelihood by way of lifting the sand through boats is to be proved by them only. In fact, no prejudice or loss would be caused to the petitioner Society even if the ramp point in so far as Tadipudi reach is concerned because the petitioner Society had auctioned the leasehold rights for Prakkilanka reach. The petitioner Society had not stated as to how it is going to be affected with huge financial loss if the ramp point is changed. Further, the averment that the representations made by the petitioner Society to the respondents 3 and 4 are not considered is not true and correct. The allegations in the said representations are all false and baseless because at that point of time the 5th respondent-Society was using the ramp which was mentioned in the auction notification but not any other ramp or the alleged ramp which was stated in the representations of the petitioner. Further, it is stated that the 5th respondent never used any political influence nor the authorities helped them. The averment of issuing telegrams and other representations are to be proved by the petitioner-Society only. In fact the authorities after

taking the representations made by the petitioner-Society into consideration had passed orders as per the procedure prescribed under law. It is further stated that the petitioner is put to strict proof of the alleged representation for refund of the amount paid by them. The averment that the 3rd respondent passed orders with the influence of the 5th respondent-Society is not true and correct and in fact the 5th respondent-Society never influenced the authorities to pass any orders much less the orders dated 24-7-2007. The gist of Rule 9N of G.O.Ms.No.84, Industries &Commerce (MI) Department, dated 10-7-2007 is correct, but the ramp cannot be changed is not correct. In the said Rule it is very clear that "However any new ramps can be permitted by the concerned Assistant Director of Mines & Geology only with the consent to concerned Mandal Revenue Officer in case of Government land and River Conservator when the River Conservation Act applies and in case of patta lands with the consent of the pattadars duly verifying the claims supported by certification issued by the M.R.O. concerned. The averment that the 5th respondent in a preplanned manner submitted a representation dated 26-5-2007 is not correct. In fact, making a representation dated 26-6-2007 is correct, but not in a planned manner

as alleged by the petitioner. In fact, as admitted by the petitioner-Society, earlier Schedule of auction dated 11-5-2007 in respect of Tadipudi reach was postponed. After that the 5th respondent made a representation requesting to change the ramp as from the notified ramp it would be difficult to lift the sand. Further, the contention that based on such a representation without there being any change in the ramp and contrary to the Rules, the 5th respondent had been using the unauthorized ramp is not correct. Till the authorities permitted the 5th respondent to change the ramp, the 5th respondent used the ramp at the notified place as per the auction notification. It is further stated that the auction schedule dated 11-5-2007 was postponed in respect of Tadipudi Reach. Immediately the 5th respondent made a representation to the concerned authorities to change the ramp point which was notified and it was brought to their notice about the difficulties in lifting the sand from the notified ramp. Subsequently, another notification is issued with regard to Tadipudi Reach is concerned. By that time, the representation of the 5th respondent was still pending for consideration and the 5th respondent is in fond hope that their representation would be considered and as such they participated in the auction and stood as the highest bidder and ultimately

their representation was considered permitting change of the ramp point. The averment that the respondent officials ought to have given an opportunity of hearing to the petitioner and on the contrary the impugned order is passed in order to benefit the 5th respondent without any reason that too merely for the sake of benefiting the 5th respondent and causing huge financial loss to the petitioner is not true and correct. In fact, the authorities after thorough verification, inspection and after considering the representations given by the petitioner-Society had passed the proceedings dated 24-7-2007 permitting the 5th respondent to change the ramp as the ramp notified in the auction notification is not convenient to lift the sand. It is further stated that the petitioner is put to strict proof in respect of the averments in para-8 of the affidavit filed in support of the Writ Petition. It is further stated that the 5th respondent was informed that the Deputy Executive Engineer, Head Works &Supplies Division, Dowleswaram had accorded permission to change the ramp. The averment that the 3rd respondent in order to endorse the illegality being perpetrated by the 5th respondent, requested the 4th respondent to give clearance for change of the ramp point is not true and correct and the same is invented for the purpose of the

Writ Petition. The further averment that the authorities did not initiate any steps for change of the ramp point for any technical reasons or the reasons assigned by them, but at the behest of the 5th respondent and to accommodate the 5th respondent to conveniently do the business is not true and correct. As there is no change of ramp prior to the orders of the authorities, the question of any action from the authorities does not arise. Further, after conducting personal inspection by the authorities concerned, the change of ramp point is permitted mainly on technical reasons but not to help the 5th respondent or for any other reasons as alleged by the petitioner-Society and hence there is no violation of Rule 9N of the Rules. Further, the 5th respondent denied the averments in para-9 of the affidavit as false and the petitioner-Society is put to strict proof of the same. It is stated that the 5th respondent obtained necessary consent from the owner of the lands where the new ramp point is formed as the land belongs to the private individual. The authorities, i.e., the 3rd respondent, passed the orders dated 24-7-2007 permitting the 5th respondent to change the ramp point after considering all the relevant procedure as contemplated under Rule 9N of the Rules, but not contrary to any provisions as alleged by the petitioner. It is also

specifically stated that there will be no financial loss to the petitioner-Society as there is no unauthorized ramp and as aforesaid the authorities after considering the representations made by the petitioner-society and after taking into consideration of other necessary permissions from various authorities had passed orders with regard to change of the ramp point. If really the petitioner has any grievance in changing the ramp point, they could as well question the same before the concerned authorities. Even otherwise, the petitioner cannot question the orders of the Assistant Director of Mines as there is an appeal provision under the Act and hence they cannot approach this Court under Article 226 of the Constitution of India. Further, the averment that if the petitioner is made known at the time of auction that the ramp in respect of Reach No.3 is going to be changed, it would have participated in the auction in respect of Reach No.4 and paid about Rs.12,20,000/- whereas having paid about Rs.4,35,000/- the 5th respondent is given benefit more than what they are entitled to and on the contrary the petitioner is indirectly deprived of its right to enjoy the leasehold rights is not at all true and correct. It is for the petitioner-Society to exhaust the remedies by approaching in a proper way before the proper authority. Even otherwise, the petitioner had not stated any reasons how it is affected if the ramp

point in respect of the 5th respondent is changed. The petitioner will not have any grievance at all if the ramp point is changed as it is no way concerned to them because their ramp is different. Further, there is no violation of any Rules or fundamental rights as alleged by the petitioner and hence the Writ Petition is misconceived and the same is liable to be dismissed. It is also further stated that earlier when the notification dated 23-4-2007 was published stating that the auction would be held on 11-5-2007 for the leasehold rights of several Reaches including Reach No.3, nobody came forward to bid Tadipudi Reach No.3 as the ramp point at the notified place is not comfortable to lift the sand. The petitioner-Society auctioned the leasehold rights for Reach No.4 under the impression that nobody would participate in the auction and they would use the said ramp also under the guise of lease for Reach No.4, but as the 5th respondent became the highest bidder for Reach No.3, the petitioner-Society bore grudge against the 5th respondent-Society and making all sorts of false allegations against the 5th respondent to see that they would be deprived of their leasehold rights to transport the sand from the convenient ramp point as ordered by the authorities concerned. Further specific stand had been taken that the 5th

respondent invested a huge amount of Rs.2,00,000/- for laying of the new ramp point after the permission was accorded by the 3rd respondent for change of the ramp point. Further, the 5th respondent also paid Rs.40,000/- to the pattadar for using his land and if the same is not allowed, the 5th respondent-Society will be put to irreparable loss and hardship.

7. The main question in controversy is that the impugned order made is not in conformity with Rule 9N of the Rules specified supra. Rule 9N of the Rules dealing with **Use of authorized ramps** reads as hereunder :

> "The lessee should make use of the authorized ramps and paths only for transportation of sand from a quarry and not open any new ramps or paths. However any new ramps can be permitted by the concerned Assistant Director of Mines & Geology only with the consent of the concerned Mandal Revenue Officer in case of Government Land and River Conservator where the River Conservation Act applies and in case of patta Lands with the consent of the Paddadar duly verifying the claims supported by certification issued by the Mandal Revenue Officer concerned".

Much emphasis had been laid on the words "*……..only with the consent of the concerned Mandal Revenue Officer in case of Government Land……..*" and submissions at length were made that inasmuch as the

consent of the Mandal Revenue Officer had not be obtained, the impugned order cannot be sustained. On the contrary, the specific stand taken by the 3rd respondent in the counter affidavit and also by the 5th respondent in the counter affidavit is to the effect that this is concerned with the River Conservator and where the River Conservation Act applies, the procedure to be followed had been duly followed and inasmuch as the patta lands also had been utilized, the consent of the pattadars also had been obtained and in the light of the same, there is no illegality.

8. It is pertinent to note that the 3rd respondent had taken a specific stand relating to the nature of the land and this Court is not inclined to disbelieve the specific stand taken by the 3rd respondent in the counter affidavit. It is no doubt true that the writ petitioner and the 5th respondent appear to be rival traders doing the same business within the nearby vicinity. In the light of the facts and circumstances, taking into consideration the respective stands taken by the parties, this Court is satisfied that Rule 9N of the Rules had not been contravened and the impugned order is in conformity with the said Rule 9N of the Rules in the light of the specific stand taken in the counter affidavit of the 3rd respondent.

Even otherwise, this Court also had gone through the relevant portions of the order and is satisfied that it is a detailed and well reasoned order as well. Certain submissions were made that the Writ Petition may have to be thrown out since the petitioner is having an effective alternative remedy by way of Appeal. It is needless to say that always the availability of an alternative remedy cannot be made a ground since the exercise of power under Article 226 of the Constitution of India being the extraordinary jurisdiction, the same can be invoked and that too after issuing *rule nisi* and after sufficient lapse of time when all the pleadings are put in, the Writ Petition cannot be thrown out on that ground. However, this Court is satisfied that on merits the Writ Petition is devoid of merit and the same is liable to be dismissed.

9. Accordingly, the Writ Petition shall dismissed. No costs.

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Justice P.S.Narayana

Date : 27-9-2007

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